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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE EDWARD M. CHEN

MACCLELLAND, ET AL.,

PLAINTIFFS,

VS.

CELLCO PARTNERSHIP, D/B/A  
VERIZON WIRELESS,

DEFENDANT.

CASE NO. 21-CV-08592 EMC

SAN FRANCISCO, CALIFORNIA

VIA ZOOM VIDEOCONFERENCE

THURSDAY, MAY 19, 2022

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

**FOR PLAINTIFF**

HATTIS AND LUKACS  
400 108TH AVE. NE, STE 500  
BELLEVUE, WASHINGTON 98004

**BY: DANIEL M. HATTIS, ESQUIRE  
CHE CORRINGTON, ESQUIRE**

DENITTIS OSEFCHEN PRINCE, P.C.  
5 GREENTREE CENTRE, SUITE 410  
525 ROUTE 73 NORTH  
MARLTON, NEW JERSEY 08057

**BY: STEPHEN DENITTIS, ESQUIRE**

**FOR DEFENDANT**

QUINN EMANUEL URQUHART & SULLIVAN LLP  
865 S. FIGUEROA STREET, 10TH FLOOR  
LOS ANGELES, CALIFORNIA 90017

**BY: CRYSTAL NIX-HINES, ESQUIRE**

**MARINA LEV, ESQUIRE**

**REPORTED BY: JOAN MARIE COLUMBINI, CSR #5435, RPR  
PRO TEM OFFICIAL COURT REPORTER, USDC**

**JOAN MARIE COLUMBINI, CSR, RPR  
PRO TEM OFFICIAL COURT REPORTER, USDC  
510-367-3043**

1 THURSDAY, MAY 19, 2022

2:05 P.M.

2  
3 **THE CLERK:** THE COURT IS CALLING MACCLELLAND, ET AL.  
4 VERSUS CELLCO PARTNERSHIP DOING BUSINESS AS VERIZON WIRELESS,  
5 CASE NUMBER 21-8592.

6 COUNSEL, PLEASE STATE YOUR APPEARANCES FOR RECORD.

7 **MR. HATTIS:** THIS IS DAN HATTIS FOR PLAINTIFFS, AND  
8 I'M JOINED WITH MY COLLEAGUE CHE CORRINGTON, WHO MAY ALSO ARGUE  
9 BUT I'LL PRIMARILY BE ARGUING ON PLAINTIFFS.

10 **THE COURT:** ALL RIGHT. THANK YOU, MR. HATTIS.

11 **MR. DENITTIS:** GOOD AFTERNOON, YOUR HONOR. THIS IS  
12 STEVE DENITTIS, ALSO ON BEHALF OF PLAINTIFFS.

13 **THE COURT:** THANK YOU, MR. DENITTIS.

14 **MS. NIX-HINES:** GOOD AFTERNOON, YOUR HONOR. CRYSTAL  
15 NIX-HINES ON BEHALF OF DEFENDANT, AND WITH ME IS MARINA LEV,  
16 WHO WILL ALSO BE ARGUING.

17 **THE COURT:** ALL RIGHT. THANK YOU, MS. NIX-HINES,  
18 MS. LEV.

19 LET'S -- I WANT TO SPEND OUR TIME FOCUSING ON A  
20 COUPLE OF THE ALLEGED SUBSTANTIVE UNCONSCIONABLY --  
21 UNCONSCIONABLE PROVISIONS.

22 ONE IS THE -- WHAT MIGHT BE CALLED AN EXCULPATORY  
23 CLAUSE. I'M TRYING TO UNDERSTAND WHAT IT REALLY DOES AND WHAT  
24 IT REALLY SAYS. OBVIOUSLY, YOU CAN HAVE AN INTEGRATION CLAUSE,  
25 AND THAT'S NOT UNCONSCIONABLE, AND THAT IS, YOU KNOW, ANY PRIOR

1 AGREEMENTS, ET CETERA, ET CETERA, OR REPRESENTATIONS ARE  
2 ABSORBED, AND YOU CAN'T HAVE EXTRINSIC OR PAROL EVIDENCE TO  
3 CONTRADICT THE CONTRACT, RIGHT? I MEAN, THAT'S A BASIC  
4 PROVISION WE FIND COMMONLY. AND I DON'T THINK THERE'S --  
5 THAT'S -- THAT DOESN'T AFFECT -- THAT APPLIES WHETHER YOU ARE  
6 IN COURT OR WHETHER YOU ARE IN ARBITRATION, IT SEEMS TO ME.

7 I GUESS MY QUESTION IS WHETHER THE CLAUSE IN QUESTION  
8 DOES ANYTHING MORE THAN THAT, BECAUSE EVEN THE PAROL EVIDENCE  
9 RULE HAS EXCEPTIONS TO IT, AS I UNDERSTAND IT.

10 SO, FOR INSTANCE, THE CLAIM OF FRAUD IN THE  
11 INDUCEMENT, IF I'M NOT MISTAKEN, I THINK FRAUD IN THE  
12 INDUCEMENT IS A CLAIM THAT CAN BE MADE EVEN IN THE FACE OF AN  
13 INTEGRATION CLAUSE UNDER NORMAL CONTRACT LAW. MAYBE SOMEONE  
14 CAN CORRECT ME IF I'M WRONG. AM I WRONG ON THAT? IT'S BEEN A  
15 WHILE SINCE I TOOK CONTRACTS, BUT THAT'S MY UNDERSTANDING.

16 **MR. HATTIS:** YOUR HONOR, I THINK THAT'S GENERALLY  
17 RIGHT. IT'S JUST THE LANGUAGE THAT'S USED HERE SPECIFICALLY,  
18 YOU CAN'T RELY ON WHAT'S SAID BY ANY SALES OR CUSTOMER SERVICE  
19 REPRESENTATIVES, AND YOU HAVE NO OTHER RIGHTS REGARDING SERVICE  
20 PER THIS AGREEMENT.

21 AND KEEP IN MIND, THE AGREEMENT THAT WE'RE TALKING  
22 ABOUT, THE WIRELESS AGREEMENT DOESN'T EVEN CONTAIN THE MAIN  
23 TERMS, WHICH ARE, LIKE, THE PRICE, THE PLAN, OR ANYTHING LIKE  
24 THAT.

25 AND SO THIS APPEARS, JUST ON HOW THIS IS WRITTEN, TO

1 NOT BE JUST AN ATTEMPT AT A -- YOU KNOW, JUST AS TO TIE UP IN  
2 TERMS OF AN INTEGRATION CLAUSE, BUT, ACTUALLY, TO PREVENT YOU  
3 FROM RELYING ON, YOU KNOW, PRETTY MUCH ANYTHING THAT'S NOT IN  
4 THIS AGREEMENT.

5 SO IT SEEMS TO BE -- AT THE VERY LEAST, IT'S AN  
6 EXAMPLE OF BAD FAITH TRYING TO TAKE THIS TOO FAR AND,  
7 BASICALLY, TO, YOU KNOW, REDUCE THE ABILITY OF PLAINTIFFS TO  
8 BRING CLAIMS.

9 **THE COURT:** SO MY QUESTION IS -- AND I THINK YOU'VE  
10 ANSWERED IT -- IS I TAKE IT YOUR ARGUMENT IS THAT THIS IS  
11 BROADER THAN AN INTEGRATION CLAUSE; IT BARS EVEN THE KINDS OF  
12 THINGS THAT COULD COME IN WHEN YOU HAVE AN INTEGRATION CLAUSE.  
13 IT'S BROADER THAN AN INTEGRATION CLAUSE. IT WOULD BAR FRAUD IN  
14 THE INDUCEMENT AS ONE EXAMPLE.

15 **MR. HATTIS:** YES, YOUR HONOR. THAT'S A GOOD WAY TO  
16 PUT IT, THAT IT'S BROADER THAN AN INTEGRATION CLAUSE. AND, I  
17 MEAN, IT EVEN SPECIFICALLY SAYS WHAT A SALES OR CUSTOMER  
18 SERVICE REPRESENTATIVE SAYS TO YOU, AND THAT'S THE HUGE  
19 MAJORITY OF HOW SALES ARE MADE, ARE ON THE PHONE.

20 AND THEN, YOU KNOW, ADDING IN YOU HAVE NO OTHER  
21 RIGHTS TO SERVICES JUST SEEMS OVER THE TOP.

22 **THE COURT:** ALL RIGHT. WHAT'S THE DEFENSE RESPONSE  
23 THAT THIS IS NOT A, QUOTE, ROUTINE INTEGRATION CLAUSE, BUT  
24 SOMETHING BROADER THAN THAT?

25 **MS. NIX-HINES:** THANK YOU, YOUR HONOR. I WANT TO SAY

1 AT THE OUTSET WE DON'T BELIEVE ANY OF THESE UNCONSCIONABLE  
2 CLAIMS ARE BEFORE YOU, BECAUSE THE AGREEMENT EXPRESSLY RESERVES  
3 QUESTIONS ABOUT ENFORCEABILITY SCOPE TO THE ARBITRATOR.

4 **THE COURT:** RIGHT.

5 **MS. NIX-HINES:** SO WE DON'T THINK YOU EVEN NEED TO  
6 REACH THIS ISSUE.

7 **THE COURT:** ALL RIGHT. I UNDERSTAND THE ARGUMENT.  
8 LET'S ASSUME FOR A MOMENT I DO REACH IT. I'D LIKE TO HEAR  
9 YOUR --

10 **MS. NIX-HINES:** UNDERSTOOD. WE BELIEVE THIS IS A  
11 STANDARD INTEGRATION CLAUSE, AND IT DOESN'T IN ANY WAY PRECLUDE  
12 ANY OF THE FRAUD CLAIMS OR ALLEGATIONS THAT 1668 IS CONCERNED  
13 WITH.

14 I ALSO NOTE THAT THEY HAVE NOT ALLEGED FRAUD. THEY  
15 HAVE NOT ALLEGED ANY CONDUCT THAT WOULD EVEN RISE TO THE LEVEL  
16 OF FRAUD. THEY DID NOT SEEK PUNITIVE DAMAGES. SO WE DON'T  
17 THINK THEY EVEN HAVE HAD ABILITY TO MAKE THIS ASSERTION.

18 BUT, IN ANY CASE, THIS IS A STANDARD INTEGRATION  
19 CLAUSE THAT MERELY BINDS VERIZON CUSTOMERS TO THE TERMS OF THE  
20 CUSTOMER AGREEMENT, WHICH THEY EXPRESSLY AGREED TO THROUGH THE  
21 CLICK-THROUGH PROCESS THAT VERIZON ESTABLISHED.

22 **THE COURT:** ALL RIGHT. ARE THERE ANY OTHER  
23 PROVISIONS OR ANYTHING ELSE THAT WOULD ENLIGHTEN ONE BESIDES  
24 THE -- THIS PROVISION? IS THERE ANY OTHER SUPPLEMENTARY OR  
25 PARTS OF THE AGREEMENT THAT I SHOULD TAKE NOTE OF, OTHER THAN

1 THE CLAUSE THAT SAID, THIS AGREEMENT AND THE DOCUMENTS IT  
2 INCORPORATES FORM THE ENTIRE AGREEMENT BETWEEN US, YOU CAN'T  
3 RELY, ET CETERA, ET CETERA, THE TWO SENTENCES? IS THERE ANY  
4 MORE, OR IS THAT IT?

5 **MR. HATTIS:** REGARDING THAT PARTICULAR ISSUE, YOUR  
6 HONOR?

7 **THE COURT:** YES.

8 **MR. HATTIS:** THE CONCEPT? YES, THAT WOULD BE IT.

9 **THE COURT:** OKAY. ALL RIGHT. LET ME GET TO THE,  
10 PERHAPS, EVEN MORE INTERESTING ISSUE, THE COORDINATED  
11 PROCEEDINGS PROVISION.

12 AND I'D LIKE TO GET THE DEFENSE RESPONSE TO THE  
13 PRACTICAL LIMITATION. I MEAN, ONE COULD UNDERSTAND WHY IT  
14 WOULD BE DESIRABLE TO HAVE SOME ORDERING AND SOME PROCESS.  
15 TYPICALLY, WHAT WE SEE -- AND WE DO THIS ALL THE TIME IN MDL  
16 CASES, IS WE'LL DO BELLWETHER SYSTEM, AND -- BUT USUALLY AFTER  
17 THE FIRST BELLWETHER YOU THEN GO INTO, YOU KNOW, NEGOTIATIONS,  
18 AND THE WHOLE PURPOSE OF THE BELLWETHER IS TO TRY TO STIMULATE  
19 A GLOBAL SETTLEMENT.

20 THIS ONE SEEMS DIFFERENT. IT'S NOT JUST A BELLWETHER  
21 PROCEEDING. I MEAN, MAYBE IT IS TO TRY TO HELP RESOLVE THE  
22 CLAIMS, BUT IF THEY'RE NOT RESOLVED, IF I UNDERSTAND THIS  
23 CORRECTLY, THIS TRANCHE OF TEN CONTINUES AS LONG AS IT TAKES TO  
24 ADJUDICATE THE CASES. I MEAN, AT SOME POINT IT KIND OF GOES  
25 BEYOND BELLWETHER, IT GOES INTO THE WHOLE SHIP.

1 DO I UNDERSTAND THIS PROPERLY, OR DID I MISCONSTRUE  
2 HOW THIS THING WORKS?

3 **MS. NIX-HINES:** I THINK YOU'RE RIGHT, YOUR HONOR, IN  
4 THE SENSE THAT VERIZON ESTABLISHED THIS CLAUSE TO PROMOTE  
5 EFFICIENCY SIMILAR TO OTHER BELLWETHER PROVISIONS, AND THE GOAL  
6 IS TO STREAMLINE THE PROCESS SO CASES CAN COME TOGETHER IN  
7 GROUPS OF, YOU KNOW, TEN AND BE ADJUDICATED QUICKLY AND  
8 EFFICIENTLY.

9 NOW, AS A PRACTICAL MATTER, YOU KNOW, THAT FIRST  
10 GROUP WILL BE INSTRUCTIVE, ALTHOUGH VERIZON IS NOT BOUND BY THE  
11 DECISION, NEITHER SIDE IS, IT WILL BE A VERY INSTRUCTIVE  
12 SETTLEMENT.

13 SO, OBVIOUSLY, THAT'S GOING TO AFFECT HOW THEY  
14 APPROACH THE SUBSEQUENT CASES.

15 AND ALTHOUGH, YOU KNOW, PLAINTIFFS RECITE THIS PARADE  
16 OF HORRIBLES ABOUT HOW MANY YEARS IT'S GOING TO TAKE, THE  
17 REALITY IS ONLY 27 PLAINTIFFS ARE BEFORE YOU. AND IF THERE'S A  
18 28TH PLAINTIFF THAT DOESN'T HAVE THE SAME GROUP OF LAWYERS, AND  
19 DESPITE WHAT THEY SAY ABOUT BEING ONLY A HANDFUL OF EXPERIENCED  
20 PLAINTIFFS' LAWYERS, THERE'S THOUSANDS OF PLAINTIFFS' LAWYERS  
21 THEY COULD RETAIN, AND THEY WOULD NOT NECESSARILY BE BOUND BY  
22 THE PROCESS. THEY COULD BRING THEIR CLAIM IN INDIVIDUAL  
23 ARBITRATION.

24 **THE COURT:** WHAT DO I DO WITH THE REPRESENTATION FROM  
25 PLAINTIFFS' COUNSEL THAT THEY REPRESENT 2712 VERIZON CUSTOMERS

1 AND ALL OF THEM WOULD BE COVERED BY THIS, AND IT WOULD TAKE,  
2 YOU ASSUME, SEVEN MONTHS PER TRANCHE OF TEN IS 156 YEARS TO GET  
3 THROUGH ALL OF THEM?

4 **MS. NIX-HINES:** IT'S PURELY SPECULATIVE, YOUR HONOR.  
5 THOSE 2,000 AND SOME, IF THAT'S IS THE CASE, ARE NOT BEFORE YOU  
6 TODAY. WHAT'S ONLY BEFORE YOU TODAY ARE THE 27 PLAINTIFFS THAT  
7 ARE NAMED PLAINTIFFS THAT ARE PART OF THIS CLASS ACTION, AND  
8 THOSE ARE THE ONLY ONES YOU NEED TO CONSIDER AT THIS POINT.  
9 SHOULD THERE BE ANY ISSUES WITH THE ARBITRATION -- AND WE DON'T  
10 THINK THERE WILL BE BECAUSE IT'S A CAREFULLY CALIBRATED  
11 PROCESS.

12 BUT, NONETHELESS, THEY HAVE -- IN PARAGRAPH 6 IT  
13 MAKES IT EXPLICITLY CLEAR: THE COURT WILL HAVE AUTHORITY TO  
14 ENFORCE THIS CLAUSE AND, IF NECESSARY, TO ENJOIN THE MASS  
15 FILING OF ARBITRATION DEMANDS AGAINST VERIZON.

16 IF THEY GO THROUGH THE PROCESS AND THIS PARADE OF  
17 HORRIBLES OCCURS, WHICH WE DON'T THINK IT WILL, THEY HAVE THE  
18 RIGHT TO COME BACK TO COURT AND SEEK RELIEF.

19 **THE COURT:** LET ME QUESTION YOUR ASSERTION THAT THE  
20 ONLY THING I NEED TO BE CONCERNED WITH RIGHT NOW ARE THE 27  
21 PEOPLE IN THIS COURTHOUSE OR THIS CASE.

22 MY RECOLLECTION OR UNDERSTANDING OF UNCONSCIONABILITY  
23 ANALYSIS IS THAT YOU LOOK AT THE OVERALL IMPACT THAT THE -- I  
24 THINK THERE ARE CASES -- I THINK I HAVE SO RULED, AND I HAVEN'T  
25 BEEN OVERTURNED, BUT I THINK THERE ARE CASES THAT SAY YOU JUST



1 DON'T LOOK TO WHAT -- YOU LOOK TO WHETHER SOMETHING IS  
2 UNCONSCIONABLE EVEN IF IT DOESN'T NECESSARILY DIRECTLY GET  
3 IMPLICATED BY THE ONE PLAINTIFF. IT'S NOT YOUR TYPICAL SORT OF  
4 STANDING ANALYSIS. YOU HAVE TO LOOK AT UNCONSCIONABILITY FROM  
5 A MORE SYSTEMIC VIEW. SO I'M NOT SURE THAT IT'S CORRECT TO SAY  
6 WE CAN IGNORE WHAT THE LONG-RUN IMPACT MIGHT BE ON OTHERS.

7 **MR. HATTIS:** YOUR HONOR, MAY I SAY SOMETHING ON THAT  
8 POINT?

9 **THE COURT:** YEAH.

10 **MR. HATTIS:** AS YOU'RE SAYING, THE LAW IS THAT THE  
11 COURT DETERMINES UNCONSCIONABILITY AT THE TIME THE CONTRACT IS  
12 FORMED, AND LIKE YOU SAID, IT'S NOT -- YOU KNOW, IT'S NOT  
13 SPECIFIC -- IT'S AN OBJECTIVE STANDARD AND YOU LOOK AT THE  
14 TOTALITY.

15 AND, YOU KNOW, IN THIS CASE THE 2,712 AREN'T  
16 THEORETICAL. AS MS. NIX-HINES KNOWS, WE SENT A DEMAND LETTER  
17 WITH A SPREADSHEET WITH ALL OF THEM. THAT'S BESIDE THE POINT.

18 THE ISSUE IS IT SHOWS HOW THIS REALLY IMPACTS PEOPLE.  
19 IT SHOWS IT'S VERY -- YOU KNOW, THAT YOU VERY QUICKLY CAN HAVE  
20 SO MANY PEOPLE YOU'LL HAVE A HUNDRED YEARS GO ABOUT BY BEFORE  
21 YOU CAN EVEN MAKE YOUR CLAIM.

22 SO I THINK IT'S VERY RELEVANT. IT'S NOT THAT IT'S A  
23 PARADE OF HORRIBLES OR IT'S OUTSIDE OF THE AUTHORITY OF THE  
24 COURT. IN FACT, THIS VERY MUCH INFORMS THE COURT LOOKING AT IT  
25 OBJECTIVELY AS A WHOLE.

1           **MS. NIX-HINES:** YOUR HONOR, IF I MAY RESPOND. I JUST  
2 WANT TO POINT OUT THEY BROUGHT THIS AS A CLASS ACTION. THEY  
3 CLAIM THAT THERE'S COMMONALITY, THAT THERE'S TYPICALITY, YOU  
4 KNOW, THAT THERE'S, YOU KNOW, COMMON ISSUES PREDOMINATE OVER  
5 INDIVIDUAL ONES.

6           SO IT'S SORT OF DISINGENUOUS TO THEN BE CONCERNED  
7 ABOUT THE FACT THAT, YOU KNOW, THERE'S GOING TO BE A  
8 STREAMLINED PROCESS OF LIKE-MINDED CLAIMS. THIS IS A PROCESS  
9 THAT GIVES THE VERY CLAIMANTS THAT THEY SAY HAVE SIMILAR CLAIMS  
10 AN OPPORTUNITY TO COME FORWARD IN GROUPS TO HAVE THOSE CLAIMS  
11 EFFICIENTLY RESOLVED.

12           AND, AS A PRACTICAL MATTER, THOSE INITIAL CASES ARE  
13 GOING TO INFORM HOW THE PARTIES HANDLE THE SUBSEQUENT CASES.  
14 IT WOULDN'T BE IN ANYBODY'S INTEREST TO DRAG OUT, YOU KNOW, IN  
15 GROUPS OF TEN, YOU KNOW, ARBITRATIONS FOR MONTHS ON END. THE  
16 WHOLE POINT IS TO GET AN EARLY INDICATION OF THE LEGITIMACY OF  
17 THE CLAIMS FROM AN ARBITRATOR, GET A RULING AND THEN, YOU KNOW,  
18 LIKELY --

19           **THE COURT:** WELL, EXCEPT THERE'S ONE PROBLEM WITH  
20 THAT, MS. NIX-HINES, THIS PROVISION, BECAUSE IT REQUIRES  
21 WAITING, TAKES A SUFFICIENT AMOUNT OF LEVERAGE AWAY.

22           LET'S SAY PLAINTIFFS DO WELL. LET'S SAY THE FIRST  
23 TWO ROUNDS DON'T GO SO WELL FOR YOUR CLIENT AND THE PLAINTIFFS  
24 DO WELL. YOUR CLIENT CAN JUST SIT THERE AND SAY, OKAY, WE'LL  
25 DO THE NEXT TEN; OKAY, WE'LL DO THE NEXT TEN AFTER THAT. FIVE

1 YEARS LATER -- I MEAN, PEOPLE ARE GOING TO -- THEY HAVE THE  
2 DISADVANTAGED TIME. IF THERE'S A REGULATOR OUT THAT THAT SAYS,  
3 YOU CAN ONLY BRING TEN CLAIMS EVERY SEVEN MONTHS AND GET IN  
4 LINE, THAT'S A LOT OF LEVERAGE FOR THE PARTY THAT'S --  
5 IRRESPECTIVE OF THE MERITS OF HOW THE SO-CALLED BELLWETHERS GO.

6 THIS IS NOT YOUR TYPICAL BELLWETHER. TYPICAL  
7 BELLWETHER IS THE LID IS OFF, YOU COME TO THE TABLE, TO THE  
8 BARGAINING TABLE, AND IF YOU DON'T COME TO GRIPS WITH IT, YOU  
9 KNOW, ALL THESE SUITS ARE GOING TO BE FILED.

10 ON THE OTHER HAND, YOU KNOW, THE DEFENDANT SAYS,  
11 YOU'VE DONE TERRIBLE ON THESE, YOU'RE GOING TO TEST US AGAIN,  
12 YOU'RE JUST GOING TO -- YOU'RE GOING TO LOSE.

13 SO THAT'S -- A BELLWETHER IS TO OPEN NEGOTIATIONS,  
14 BUT WHEN YOU PUT A REGULATOR OUT THERE ON EVERYTHING ELSE AND  
15 BASICALLY SAY, FOR SOME OF YOU PEOPLE THE AVERAGE YOU MAY HAVE  
16 TO WAIT FOR THIS PARTICULAR GROUP OF 2,700 PEOPLE IS 78 YEARS,  
17 THAT -- YOU GET A DISTORTED NEGOTIATION PROCESS AFTER THAT.  
18 THAT'S NOT A TRUE BELLWETHER.

19 **MS. NIX-HINES:** IT WOULD BE JUST THE OPPOSITE, YOUR  
20 HONOR, RESPECTFULLY. I MEAN, IF VERIZON LOSES THE FIRST 10 OR  
21 THE FIRST 20, IT WOULDN'T BE IN THEIR INTEREST TO DRAG THIS  
22 OUT. THEY WOULD WANT TO RESOLVE IT QUICKLY BECAUSE IT'S THE  
23 SAME ARBITRATOR VIEWING THE SAME SET OF CASES. THERE'S NO  
24 REASON TO THINK THE OUTCOME WOULD BE DIFFERENT FOR THE  
25 SUBSEQUENT CASES, SO THERE WOULDN'T BE AN INTEREST IN DRAGGING

1 IT OUT.

2 **MR. HATTIS:** YOUR HONOR, THAT'S NOT HOW THE AAA  
3 WORKS. EVERY SINGLE INDIVIDUAL IN THE FIRST TEN, EACH ONE HAS  
4 A SEPARATE ARBITRATOR, THEN EVERY SINGLE ONE OF THESE 2,700 ARE  
5 GOING TO HAVE A SEPARATE ARBITRATOR, AND IT'S CERTAINLY IN  
6 VERIZON'S INTEREST TO KEEP THIS GOING.

7 I MEAN, BASICALLY, YOU CAN ONLY DO 20 ARBITRATIONS A  
8 YEAR, SINCE EACH SET OF TEN TAKES ABOUT SEVEN MONTHS.  
9 ARBITRATION FEES AT \$3,300 A CASE AND SO FORTH, NOW, INSTEAD OF  
10 POTENTIALLY MILLIONS AND MILLIONS OF DOLLARS, THEY ONLY HAVE TO  
11 PAY 66,000 A YEAR, AND YOU KNOW, THEY'VE WIPE US OUT. AS YOU  
12 SAID, YOUR HONOR, THIS IS COMPLETELY IN THEIR INTEREST.

13 WHAT'S GOING ON HERE, REALLY YOU CAN LOOK AT -- YOU  
14 KNOW, IN TERMS OF THE ARBITRATION PROVISION AND THE LAST  
15 SENTENCE IN THE MASS ARB PROVISION, IT SAYS A COURT WILL HAVE  
16 AUTHORITY TO ENFORCE THIS CLAUSE AND, IF NECESSARY, TO ENJOIN  
17 THE MASS FILING, MASS ARBITRATION DEMANDS AGAINST VERIZON.  
18 THAT'S WHAT THEY WANT. THEY WANT THAT LOTS OF PEOPLE CAN'T  
19 MAKE CLAIMS.

20 THERE'S NOTHING WRONG WITH MASS ARBITRATION. IT'S  
21 THE LOGICAL CULMINATION OF THEIR POSITION, HEY, YOU DON'T NEED  
22 CLASS ACTIONS, ALL THESE INDIVIDUALS CAN BRING INDIVIDUAL  
23 CLAIMS. NOW THEY SAY, NO, YOU CAN'T DO THAT EITHER; IF THERE'S  
24 LOTS OF FILINGS, WE CAN GO TO COURT AND PREVENT THAT, TOO.  
25 THAT'S WHAT'S GOING ON, AND THEY GAVE IT AWAY RIGHT THERE.

1           **MS. NIX-HINES:** YOUR HONOR, I MEAN, THIS IS OBVIOUSLY  
2 IN RESPONSE TO PLAINTIFFS' LAWYERS LIKE MR. HATTIS AND OTHERS  
3 THAT, YOU KNOW, BRING, YOU KNOW, MASS ARBITRATIONS IN ORDER TO  
4 GAIN LEVERAGE IN COMPANY IS A REASONABLE RESPONSE. BUT I MEAN,  
5 THIS IS A VERY FAIR AND ENFORCEABLE PROVISION. YOU KNOW, THIS  
6 IS NOT THE SITUATION WHERE --

7           **THE COURT:** IS THERE ANY PRECEDENT, MS. NIX-HINES?  
8 DOES AAA OR JAMS OR INTERNATIONAL ASSOCIATION OF ARBITRATORS,  
9 DO THEY HAVE -- IS THIS BARRED FROM SOME PROCESS?

10           **MS. NIX-HINES:** NO. IN FACT, MR. HATTIS, YOU KNOW,  
11 TRIED TO REACH OUT TO THE AAA, ALLEGING ALL SORTS OF  
12 IMPROPRIETIES, AND THEY DECLINED TO REVIEW THE CLAIM BECAUSE  
13 THIS IS THE APPROPRIATE FORUM.

14           AND, REALLY, LIKE THESE CLAIMS SHOULD BE PUT IN FRONT  
15 OF THE ARBITRATOR, BECAUSE THE AGREEMENT EXPRESSLY RESERVES THE  
16 VERY KIND OF CLAIMS THAT MR. HATTIS IS MAKING TO THE  
17 ARBITRATOR.

18           **THE COURT:** I UNDERSTAND THAT. MY QUESTION IS A  
19 LITTLE DIFFERENT.

20           DID YOUR CLIENT BORROW THIS MODEL FROM SOME EXISTING  
21 INSTITUTIONALIZED PRACTICE SOMEWHERE, OR THIS WAS CREATED BY  
22 YOUR CLIENT, BY VERIZON?

23           **MS. NIX-HINES:** IT WASN'T MODELED IN ANY SPECIFIC  
24 PRACTICE, YOUR HONOR. OBVIOUSLY, THE BUSINESS COMMUNITY HAS  
25 BEEN LOOKING AT WAYS TO ADDRESS THE PHENOMENON OF MASS

1 ARBITRATIONS. BUT UNLIKE SOME OTHERS, YOU KNOW, WHICH  
2 MR. HATTIS CITED IN HIS BRIEF, YOU KNOW, THIS IS A VERY FAIR  
3 AND REASONABLE APPROACH. VERIZON PAYS ATTORNEY'S FEES. THEY  
4 DON'T DICTATE COUNSEL. THEY ALLOW A CONTINUOUS PROCESS SO THAT  
5 CLAIMANTS CAN CONTINUE TO BRING ARBITRATIONS, OR THEY CAN GO IN  
6 SMALL CLAIMS COURT.

7 **THE COURT:** THERE'S NO OUTSIDE LIMIT. THERE'S NO  
8 LIMIT THAT SAYS, NO MATTER WHAT, WE WILL RESOLVE ALL THESE  
9 CASES AND GO TO ARBITRATION WITHIN X MONTHS, X YEARS. THERE'S  
10 NO GUARANTEE OF AN END DATE.

11 **MS. NIX-HINES:** THERE'S NO GUARANTEE OF AN END DATE,  
12 BUT THAT WOULD BE SORT OF IMPOSSIBLE TO ASSUME, BECAUSE,  
13 OBVIOUSLY, IT ALSO DEPENDS ON THE AAA'S CASELOAD AND  
14 SCHEDULING. BUT IT'S AN ATTEMPT TO STREAMLINE THE PROCESS.  
15 IT'S NOT AN ATTEMPT TO BE A LOGJAM. THAT'S WHY THEY DO IT IN  
16 SMALL PATCHES.

17 UNLIKE, YOU KNOW, SOME OTHER SYSTEMS, THEY DON'T  
18 IMPOSE A DECISION ON THE REST OF THE CLAIMANTS. THAT MIGHT BE  
19 A SITUATION WHERE IT WOULD BE UNCONSCIONABLE IF YOU SAY --

20 **MR. HATTIS:** YOUR HONOR.

21 **MS. NIX-HINES:** -- THE OUTCOME OF THE FIRST, YOU  
22 KNOW, BATCH OF TEN IS GOING TO THEREFORE CONTROL THE OUTCOME OF  
23 THE OTHER CLAIMANTS. VERIZON DID NOT SPECIFICALLY DO THAT.

24 **MR. HATTIS:** YOUR HONOR, SOMETHING THAT'S INTERESTING  
25 HERE AND UNIQUE. IT SPECIFICALLY SAYS YOU CAN'T EVEN FILE THE

1 ARBITRATIONS.

2 AND WHAT'S ALSO INTERESTING IN APRIL 2021, WHICH IS  
3 WHEN VERIZON ADDED THIS MASS ARBITRATION PROVISION, THAT SAYS  
4 YOU CAN'T EVEN FILE THEM UNTIL YOUR GROUP OF TEN COMES UP,  
5 WHICH MIGHT BE 150 YEARS, AT THAT VERY SAME TIME THEY ADDED  
6 INTO THEIR AGREEMENT THAT THE STATUTE OF LIMITATION APPLIES IN  
7 ARBITRATION. WHAT A COINCIDENCE. NOW YOU FIVE YEARS OR TEN  
8 YEARS AND YOU'VE LOST THE STATUTE OF LIMITATIONS.

9 I MEAN, THIS IS -- THIS DOESN'T EXIST. THIS IS SO  
10 OUT THERE AND SUCH A STRETCH. IT'S ALMOST LIKE THEY ASSIGNED  
11 SOME JUNIOR ASSOCIATE TO WRITE AN ARBITRATION AGREEMENT THAT  
12 WAS SO ONE-SIDED AND EGREGIOUS, IT'S LIKE JUST MAKE SURE THEY  
13 CAN'T DO ANYTHING.

14 **MS. NIX-HINES:** THAT'S ABSOLUTELY FALSE, YOUR HONOR.

15 **THE COURT:** HOLD ON. ONE AT A TIME. LET HIM FINISH,  
16 AND I WANT YOUR ANSWER.

17 GO AHEAD, MR. HATTIS.

18 **MR. HATTIS:** I'M DONE. IT'S JUST THE TIMING AND ALL  
19 OF THIS JUST SEEMS PRETTY CLEAR THAT ALL OF THIS IS DONE IN BAD  
20 FAITH, AND HOW ALL OF THESE WORK TOGETHER IS PERMEATED WITH  
21 UNCONSCIONABILITY.

22 **THE COURT:** LET ME ASK, MS. NIX-HINES, IF YOU COULD  
23 RESPOND TO THE STATUTE OF LIMITATIONS RUNNING. LET'S SAY  
24 SOMEBODY IS ON THE LIST AND IT'S FOUR YEARS, WHAT THEN?

25 **MS. NIX-HINES:** SO PLAINTIFFS ALLEGE THEY HAVE TO PAY

1 THE ADMINISTRATIVE CHARGE EVERY MONTH, INCLUDING THROUGH THE  
2 PRESENT. SO THAT MEANS THAT EVERY MONTH RESTARTS THEIR ABILITY  
3 TO BRING A DISPUTE TO VERIZON AND BEFORE AN ARBITRATION.  
4 THERE'S NO CUTOFF IN THE SENSE THAT THERE'S AN ONGOING ALLEGED  
5 VIOLATION, AND, THEREFORE, EACH MONTH TRIGGERS A NEW  
6 OPPORTUNITY TO SEND THE NOTICE.

7 **THE COURT:** DO YOU AGREE WITH THAT? DO YOU CONCEDE  
8 THAT THAT STATUTE RUNS EVERY TIME THERE'S A NEW START TO THE  
9 STATUTE? OR WOULD YOU TAKE THE VIEW THAT THE FIRST OVERT ACT  
10 RUNS, AND THERE'S NOT A CONTINUAL ACCRUAL?

11 **MS. NIX-HINES:** WELL, OBVIOUSLY, I MEAN, IT RESTARTS  
12 UP UNTIL THE POINT WHERE THERE'S, YOU KNOW, THE ULTIMATE  
13 STATUTE OF LIMITATIONS UNDER THE STATUTE. BUT HIS CLAIM IS THE  
14 180-DAY NOTICE PROVISION IS UNCONSCIONABLE.

15 **THE COURT:** WE'RE NOT EVEN TALKING ABOUT THAT. IT'S  
16 THE CLAUSE THAT SAYS: THE REMAINING CASES WILL NOT BE FILED IN  
17 ARBITRATION UNTIL THE FIRST TEN HAVE BEEN RESOLVED. WHAT DOES  
18 THAT MEAN? DOES THAT MEAN YOU CAN FILE AFTER THE FIRST TEN  
19 HAVE BEEN RESOLVED, EVEN IF YOU'RE LIKE NUMBER 2,000?

20 **MS. NIX-HINES:** THEY'RE GOING TO BE DONE IN BATCHES.  
21 AND AS WITH CLASS ACTION WHERE THEY IDENTIFY NAMED PLAINTIFFS  
22 HERE, THE PLAINTIFFS' COUNSEL WOULD IDENTIFY THEIR FIVE.  
23 VERIZON WOULD IDENTIFY FIVE, AND THE NEXT TEN WOULD PROCEED  
24 ACCORDINGLY.

25 **MR. HATTIS:** YOUR HONOR --



1           **MS. NIX-HINES:** IT'S A SEQUENCE OBVIOUSLY.

2           **THE COURT:** WOULDN'T THE STATUTE RUN IF YOU'RE NOT  
3 THE FIRST -- LET'S SAY YOU'RE IN -- YOU HAVE THE UNFORTUNATE  
4 SITUATION OF BEING IN A LATER GROUP, AND THAT IT TAKES YOU FOUR  
5 YEARS BEFORE YOU GET THROUGH THE BATCHES OF TEN AND THE STATUTE  
6 HAS RUN AT THAT POINT, WHAT HAPPENS THEN?

7           **MS. NIX-HINES:** SO IF YOU LOOK FURTHER DOWN IN  
8 PARAGRAPH 6, IT SAYS:

9                               "THIS PROCESS MAY CONTINUE UNTIL  
10 THE PARTIES ARE ABLE TO EITHER RESOLVE ALL  
11 THEIR CLAIMS, EITHER THROUGH SETTLEMENT OR  
12 ARBITRATION."

13           THAT IS WHAT IS INTENDED BY THIS PROVISION. OR THEY  
14 CAN FILE WITH SEPARATE COUNSEL. THAT IS NOT PART OF THE, YOU  
15 KNOW, BELLWETHER PROCEEDING. THAT'S AVAILABLE TO THEM AS WELL.

16           **THE COURT:** IF THEY HAVE THE SAME COUNSEL, CAN THEY  
17 FILE WHILE OTHER CASES ARE PENDING IF THEY'RE STILL IN THE  
18 QUEUE?

19           **MS. NIX-HINES:** NO, IT'S DONE IN BATCHES, SO THEY  
20 WOULD TO HAVE WAIT UNTIL THAT GROUP OF TEN IS RESOLVED, BUT IT  
21 SAYS --

22           **THE COURT:** SO THE STATUTE THEORETICALLY COULD RUN ON  
23 SOMEBODY WHO'S IN THE QUEUE AND, UNFORTUNATELY FOR THEM, THEY  
24 SERVE IN THE MIDDLE OR THE BACK OF THE QUEUE.

25           **MS. NIX-HINES:** BY THE EXPRESS TERMS OF PARAGRAPH 6,

1 IT SAYS THE PROCESS MAY CONTINUE UNTIL THE PARTIES ARE ABLE TO  
2 RESOLVE ALL OF THE CLAIMS THROUGH ARBITRATION. SO THE INTENT  
3 IS THEY WILL ALL EITHER BE ARBITRATED, OR, MORE LIKELY,  
4 DEPENDING ON THE OUTCOME OF THE INITIAL CASES, THEY WOULD BE  
5 SETTLED. IT'S NOT INTENDED TO BE A BAIT AND SWITCH.

6 **THE COURT:** BUT IT COULD BE -- BUT THE STATUTE COULD  
7 RUN. THIS DOESN'T SAY THE STATUTE OF LIMITATIONS IS STAYED  
8 PENDING RESOLUTION OF THESE MASS ARBITRATIONS.

9 **MS. NIX-HINES:** I BELIEVE, MS. LEV IS SIGNALING THAT  
10 SHE'D LIKE TO CHIME IN.

11 **THE COURT:** ALL RIGHT. MS. LEV.

12 **MS. LEV:** GOOD AFTERNOON, YOUR HONOR.

13 I WANTED TO POINT OUT A COUPLE OF THINGS.

14 FIRST, THIS RELIEF THAT PLAINTIFFS ARE SEEKING WILL  
15 BE AVAILABLE TO THEM, POTENTIALLY SEEKING YOUR COUNSEL ON IT,  
16 IF AND WHEN ANY SORT OF DELAY ACTUALLY MATERIALIZES. AT THIS  
17 MOMENT, YOUR HONOR, THERE ARE 27 PLAINTIFFS BEFORE YOU. I'M  
18 NOT RETREADING PREVIOUS GROUND. I WANT TO SAY SOMETHING  
19 DIFFERENT.

20 THOSE 27 WOULD BE DONE WITHIN THREE BATCHES. BY  
21 PLAINTIFFS' OWN ADMISSION, THAT IS WELL WITHIN ANY CONCEIVABLE  
22 STATUTE OF LIMITATIONS FOR ANY OF THESE CLAIMS.

23 **THE COURT:** THAT GOES TO THE QUESTION WHETHER I'M  
24 SUPPOSED TO JUDGE AN ARBITRATION PROVISION AND ITS  
25 CONSCIONABILITY AT THE TIME THAT IT'S IMPOSED OR CREATED AND

1 GOES INTO EFFECT AND NOT LOOK AT THE SPECIFICS, NECESSARILY,  
2 OF, YOU KNOW, WHO'S THERE AND WHO'S GOING TO TAKE ADVANTAGE OF  
3 IT, ET CETERA, ET CETERA.

4 **MR. HATTIS:** YOUR HONOR, IT GOES BEYOND THAT --

5 **THE COURT:** WAIT. LET MS. LEV FINISH.

6 **MS. LEV:** THANK YOU, YOUR HONOR.

7 I THINK OUR REQUEST WOULD BE LET US TRY, BECAUSE WE  
8 BELIEVE THERE IS NO REASON THIS WOULD DRAG OUT FOR, YOU KNOW,  
9 156 YEARS.

10 WE BELIEVE THAT, HAVING BROUGHT THIS ACTION AS A  
11 CLASS ACTION IN CONTRAST TO, FOR EXAMPLE, THE, YOU KNOW,  
12 AMENDED COMPLAINT IN THE *GRUBHUB* OPINION THAT YOUR HONOR  
13 OFFERED RECENTLY, THIS IS A DIFFERENTLY SITUATED CASE. THIS IS  
14 A CASE WHERE THEY'RE CLAIMING, LOOK, EVERYBODY HERE IS SITUATED  
15 IN THE SAME WAY. TO THEN SUGGEST THAT WITHIN EVEN ONE ROUND OF  
16 TEN, LET ALONE THREE, YOU DO NOT BEGIN TO ACHIEVE A COMMON END?  
17 THAT'S DISINGENUOUS.

18 NOW, YOU'RE SUGGESTING, MR. HATTIS, THAT VERIZON  
19 WOULD SOMEHOW BE INCENTIVIZED TO CONTINUE THIS AD INFINITUM.  
20 LET ME ADDRESS BRIEFLY WHY THAT'S NOT THE CASE.

21 WERE VERIZON NOT TO PREVAIL ON AN INJUNCTIVE PORTION  
22 OF THIS, IT'S NOT JUST -- YOU KNOW, THEY'RE NOT SEEKING REFUNDS  
23 FOR ADMIN PERIOD, FULL STOP. THEY'D LIKE A REVAMP OF VERIZON'S  
24 ADVERTISING PRACTICES, ESSENTIALLY. THAT'S AN EXPENSIVE  
25 UNDERTAKING, YOUR HONOR. IF YOU HAVE A DIFFERENT NOTICE THAT

1 YOU GIVE TO A PARTICULAR CLIENT, THAT'S NOT SOMETHING YOU CAN  
2 DO ON AN AD HOC BASIS FOR ONE CLIENT.

3 SO FOR VERIZON IT WOULDN'T JUST BE YOU'RE LOSING 195  
4 PER PERSON AS THEY'RE SUGGESTING. IT MEANS THAT IT  
5 MEANINGFULLY INFORMS VERIZON'S BUSINESS DECISIONS WHETHER THEY  
6 WIN OR LOSE THOSE --

7 **THE COURT:** I ASSUME THIS IS WRITTEN IN A WAY THAT  
8 THE ARBITRATOR DOES NOT HAVE THE ABILITY TO ISSUE CLASS-WIDE  
9 INJUNCTIVE RELIEF, CORRECT?

10 **MR. HATTIS:** CORRECT.

11 **MS. LEV:** CORRECT.

12 **THE COURT:** IF THEY WIN, QUOTE, INJUNCTIVE RELIEF  
13 INDIVIDUALLY, IT SEEMS TO ME ALL IT TAKES IS VERIZON SENDS A  
14 LETTER TO THOSE TEN PEOPLE SAYING, HEY, HERE'S THE DEAL.  
15 WHAT'S SO HARD ABOUT THAT?

16 **MS. LEV:** WHAT THEY'RE ASKING FOR IN THEIR COMPLAINT  
17 ON THE PRIVATE INJUNCTIVE RELIEF COMPONENT OF IT IS THAT THE  
18 CUSTOMER BILLS REFLECT DIFFERENT THINGS, AND THOSE CUSTOMER  
19 BILLS CANNOT BE DONE ON AN AD HOC BASIS.

20 SO MY POINT IS JUST --

21 **THE COURT:** WHY NOT? IF IT'S ONLY TEN OF THEM LEFT.

22 **MS. LEV:** AS A BUSINESS PRACTICE, YOU HAVE TO HAVE A  
23 COMMON APPROACH TO HOW YOU CHARGE THE ADMINISTRATIVE FEE.

24 **MS. NIX-HINES:** IF YOU LOOKED AT THE PRAYER FOR  
25 RELIEF, YOUR HONOR, IT'S VERY BROAD WHAT THEY'RE SEEKING, AND

1 THAT WOULD BE EXPENSIVE TO IMPLEMENT.

2 **THE COURT:** ALL RIGHT. SO YOU'RE SAYING, AS A  
3 PRACTICAL MATTER, YOU PROBABLY WON'T NEED THIS PROCEDURE. IN  
4 OTHER WORDS, YOU COULD HAVE WRITTEN A PROCEDURE THAT SAID, ALL  
5 RIGHT, AFTER THE FIRST TWO BELLWETHERS, WE'LL OPEN IT UP, AND  
6 IT WOULD MAKE NO DIFFERENCE TO VERIZON, AS A PRACTICAL MATTER.

7 **MS. LEV:** YES. AS A PRACTICAL MATTER, IT COULD BE.

8 **THE COURT:** COULD BE.

9 **MS. LEV:** YES.

10 **MS. NIX-HINES:** YOUR HONOR, I DO -- I KNOW YOU'RE  
11 EXPLORING THESE ISSUES, BUT I AM -- I DO WANT TO COME BACK TO  
12 THE FACT THAT THE BARGAIN FOR AGREEMENT THAT THE PARTIES  
13 ENTERED INTO IS ALL OF THESE CHALLENGES WOULD BE DONE BY THE  
14 ARBITRATOR.

15 **THE COURT:** I KNOW. I KNOW THERE'S A LAW ABOUT  
16 WHETHER YOU LOOK AT THE -- WHETHER IT'S A SOPHISTICATED PARTY  
17 OR NOT. WE'RE FAMILIAR WITH THAT LAW. I UNDERSTAND THE  
18 ARGUMENTS.

19 **MS. NIX-HINES:** ACTUALLY, I WAS GOING TO POINT YOU TO  
20 THE FACT THAT THE AGREEMENT EXPRESSLY INCORPORATES THE AAA'S  
21 CONSUMER ARBITRATION RULES.

22 **THE COURT:** YES.

23 **MS. NIX-HINES:** THE NINTH CIRCUIT CLEARLY HELD THE  
24 INCORPORATION OF AAA RULES -- IN THAT CASE IT WAS THE CONSUMER  
25 ARBITRATION RULE, 14(A), WHICH PROVIDES THAT THE ARBITRATOR

1 SHALL HAVE THE POWER TO RULE IN HIS OR HER JURISDICTIONS,  
2 INCLUDING ANY OBJECTIONS WITH RESPECT TO THE EXISTENCE, SCOPE,  
3 OR VALIDITY OF THE ARBITRATION AGREEMENT OR TO THE  
4 ARBITRABILITY OF ANY CLAIM OR COUNTERCLAIM.

5 AND THE NINTH CIRCUIT HAS SAID IN *BRENNAN* THAT, YOU  
6 KNOW, INCORPORATING AAA RULES CONSTITUTES CLEAR AND  
7 UNMISTAKABLE EVIDENCE THAT CONTRACTING PARTIES AGREE TO  
8 ARBITRATE ARBITRABILITY.

9 **THE COURT:** RIGHT. BUT THE COURT ALSO LEFT OPEN THE  
10 QUESTION WHETHER THE HOLDING APPLIES IN THE CONTEXT OF, QUOTE,  
11 UNSOPHISTICATED PARTIES, AND THAT'S WHERE YOU'VE GOTTEN A RANGE  
12 OF DECISIONS FROM THE DISTRICT COURTS, RIGHT?

13 **MS. NIX-HINES:** WELL, *BRENNAN* GOES ON TO SAY *ORACLE*  
14 *AMERICA V. MYRIAD GROUP* -- THAT'S AT 74 F.3D 1069, A NINTH  
15 CIRCUIT CASE IN 2013, WHERE THEY SAY:

16 "WE HAVE OBSERVED THAT VIRTUALLY  
17 EVERY CIRCUIT TO HAVE CONSIDERED THE ISSUE  
18 HAS DETERMINED THAT INCORPORATION OF THE AAA  
19 ARBITRATION RULES CONSTITUTES CLEAR AND  
20 UNMISTAKABLE EVIDENCE THAT THE PARTIES AGREED  
21 TO ARBITRATE ARBITRABILITY."

22 NONE OF THESE SPEECHES -- OR EVEN IF YOU FIND THEM,  
23 YOU KNOW, LEGITIMATE CLAIMS SHOULD BE DECIDED BY YOUR HONOR.  
24 THEY BELONG --

25 **THE COURT:** YOU DISAGREE WITH JUDGE GONZALEZ, JUDGE

1     ALSUP AND VARIOUS OTHERS, INCLUDING MYSELF, OF THIS COURT WHO  
2     HAVE FOUND THAT THERE IS A LINE, THAT YOU DO LOOK AT THE  
3     SOPHISTICATION OF THE PARTIES TO DETERMINE WHETHER THE AAA  
4     RULES, JUST CITING THE AAA RULES, IS SUFFICIENT TO BE A CLEAR  
5     AND UNMISTAKABLE AGREEMENT TO ARBITRATE ARBITRABILITY.

6             **MS. NIX-HINES:** YOUR HONOR, EVEN IF YOU LOOK AT THE  
7     SOPHISTICATION OF THE PARTIES, I MEAN, THIS IS NOT A CASE WHERE  
8     IT WAS IN SMALL FINE PRINT IN THE BACK OF SOME, YOU KNOW,  
9     20-PAGE AGREEMENT THAT THEY OFTEN JUST CLICK ON. THIS WAS A  
10    VERY CLEAR CLICK-THROUGH AGREEMENT. IT'S STATED IN MULTIPLE  
11    CASES IN BOLD TYPE, DIFFERENT COLOR, THAT THEY WERE AGREEING TO  
12    ARBITRATE, THAT THEY WERE WAIVING THEIR RIGHT TO A JURY, AND  
13    ALL OF THAT IS VERY CLEARLY LAID OUT.

14            EVEN IF YOU WERE, YOU KNOW, NOT A SOPHISTICATED  
15    CONSUMER, THE FACT YOU HAVE TO CLICK ON EACH ONE OF THOSE AND,  
16    AGREE AND ACCEPT, IT'S IN BOLD LANGUAGE, THAT IS CERTAINLY THE  
17    CASE THAT, YOU KNOW, THEY WERE CLEARLY PUT ON NOTICE THAT THIS  
18    IS WHAT THEY WERE -- YOU KNOW, THE AGREEMENT THAT THEY WERE  
19    ENTERING INTO.

20            SIGNIFICANTLY, YOU KNOW, THE PLAINTIFFS HAVE NOT  
21    DISPUTED THIS IS A VALID ARBITRATION AGREEMENT, OR THAT THE  
22    ARBITRATION AGREEMENT APPLIES TO THEIR CLAIMS. THERE WOULD BE  
23    NO BASIS TO DO SO.

24            **THE COURT:** I'LL GIVE YOU A BRIEF CHANCE TO RESPOND,  
25    MR. HATTIS, AND I'M GOING TO TAKE THE MATTER UNDER SUBMISSION.

1           **MR. HATTIS:** YOU DON'T EVEN HAVE TO GET THERE, YOUR  
2 HONOR, BECAUSE THE THRESHOLD ISSUE IS THAT THE CONSUMER CAN  
3 CHOOSE, IT SAYS, ANY AGREEMENT BETWEEN THE AAA RULES AND BBB  
4 RULES, WHICH THEY GO OUT OF THEIR WAY TO NOT POINT IT OUT IN  
5 THEIR BRIEF. AND IT SAYS ANY CLAIM FOR LESS THAN \$10,000 YOU  
6 CHOOSE. GUESS WHAT? THE BBB RULES DON'T HAVE A DELEGATION  
7 CLAUSE, NOT THERE. IT DOESN'T EXIST. SO THERE'S NO POSSIBLE  
8 WAY THERE COULD BE ANY CLEAR AND UNMISTAKABLE DELEGATION,  
9 BECAUSE ONE OF THE TWO OPTIONS THAT CAN BE CHOSEN DOESN'T HAVE  
10 A DELEGATION CLAUSE. YOU DON'T EVEN HAVE TO GO THERE.

11           **THE COURT:** ALL RIGHT. I'LL TAKE THE MATTER UNDER  
12 SUBMISSION. THANK YOU. I APPRECIATE IT.

13           **MS. NIX-HINES:** THANK YOU, YOUR HONOR.

14           **THE CLERK:** LET ME ASK ABOUT -- WE HAVE A STATUS  
15 CONFERENCE SCHEDULED. OBVIOUSLY, IT WOULD BE IMPACTED. LET ME  
16 ASK ABOUT ADR. IT SAYS IN THIS STATUS CONFERENCE STATEMENT  
17 THAT PARTIES ARE AMENABLE TO PRIVATE MEDIATION AT THE  
18 APPROPRIATE TIME. I GUESS MY QUESTION IS, WHAT IS THE  
19 APPROPRIATE TIME?

20           **MS. LEV:** PART OF OUR POSITION, YOUR HONOR, HAS BEEN,  
21 YOU KNOW, THAT WE'D ASK THAT YOU STAY THE PROCEEDINGS PENDING  
22 THE RESOLUTION OF OUR MOTION TO COMPEL ARBITRATION, AND SO THAT  
23 MIGHT INFORM TIMING IN THAT RESPECT.

24           **MS. NIX-HINES:** YOU MIGHT JUST HIGHLIGHT THE SUPREME  
25 CASE, TOO, MS. LEV.



1                   **MS. LEV:** I'M SORRY?

2                   **MS. NIX-HINES:** YOU MIGHT CITE THE SUPREME COURT CASE  
3 AS WELL, *VIKING RIVER*.

4                   **MS. LEV:** YES. SO ONE OF THE CONSIDERATIONS, YOUR  
5 HONOR, IS -- OF COURSE, YOUR HONOR'S DOUBTLESS AWARE OF *VIKING*  
6 *RIVER* IS CURRENTLY PENDING BEFORE THE SUPREME COURT. ARGUMENT  
7 HAS ALREADY BEEN HELD ON MARCH 30TH. AND AS ANYBODY WELL  
8 VERSED IN SUPREME COURT PRACTICE, WHICH, OF COURSE,  
9 MS. NIX-HINES VERY MUCH IS, WILL TELL YOU THEY ARE GOING TO  
10 HAND DOWN A DECISION PRIOR TO EARLY JULY. WE DON'T HAVE TOO  
11 MUCH LONGER TO WAIT.

12                   BUT IT WILL DOUBTLESS INFORM YOUR CONSIDERATIONS ON  
13 THIS MOTION TO COMPEL, YOUR HONOR, BECAUSE, TO THE EXTENT THAT  
14 PLAINTIFFS ARE GOING TO HANG THEIR HAT IN ANY WAY ON THE MCGILL  
15 RULE, THE ISKANIAN RULE WITHIN CALIFORNIA IS AN ANALOGOUS  
16 CONCEPT, AND MCGILL VERY WELL MAY BE IMPACTED BY THE SUPREME  
17 COURT'S RULING.

18                   **THE COURT:** SO IN OTHER WORDS, TO GET BACK TO MY  
19 QUESTION, IS YOU'RE NOT INTERESTED IN PRIVATE MEDIATION YET.

20                   **MS. NIX-HINES:** NOT AT THIS TIME.

21                   **MS. LEV:** NO, YOUR HONOR.

22                   **MS. NIX-HINES:** YOU KNOW, WE WOULD REQUEST, THOUGH,  
23 THAT YOU ISSUE A STAY PENDING YOUR ADJUDICATION OF OUR MOTION  
24 TO COMPEL, AND, OBVIOUSLY --

25                   **THE COURT:** WHAT'S GOING TO HAPPEN IN THE NEXT, LET'S

1 SAY, MONTH AND A HALF IN THIS CASE IF I DON'T ISSUE A STAY?

2 MS. LEV: PLAINTIFFS HAVE, YOU KNOW, SOUGHT INITIAL  
3 DISCLOSURES WITHIN 11 DAYS, YOUR HONOR, AND WE THINK THAT'S  
4 PREMATURE PENDING THE RESOLUTION OF THE MOTION.

5 MR. HATTIS: WELL, INITIAL DISCLOSURES, ISN'T THAT  
6 THE KIND OF THING, WHETHER YOU GO TO ARBITRATION OR WHETHER YOU  
7 GO TO COURT, IT SEEMS LIKE A VERY MINOR EVENT.

8 MS. NIX-HINES: WITHOUT A STAY, YOUR HONOR, THEY MAY  
9 PURSUE DISCOVERY.

10 THE COURT: THAT'S WHY I ASKED WHAT'S GOING TO  
11 HAPPEN. IF IT'S JUST DISCLOSURES, I COULD SAY, WHICH I OFTEN  
12 DO, ALL RIGHT, I'M GOING TO ISSUE A PARTIAL STAY, DO YOUR  
13 INITIAL DISCLOSURES, MAYBE START PREPARING, GET READY FOR YOUR  
14 INTERROGATORIES AND STUFF, BUT DON'T PROMULGATE IT OR YOU  
15 PROMULGATE IT, BUT IT WON'T BE ANSWERABLE UNTIL I LIFT THE  
16 STAY, YOU KNOW, JUST SO WE DON'T NECESSARILY LOSE ALL THE TIME.  
17 BUT ON THE OTHER HAND, THERE'S NOT MUCH -- THE STAY IS TO  
18 PREVENT ANY BURDEN THAT BECOMES OBVIATED.

19 SO WHY NOT, IN OTHER WORDS, HAVE THE PARTIES DO THEIR  
20 INITIAL DISCLOSURES DURING THE NEXT -- YOU KNOW, UNTIL I RULE.  
21 NOW, OF COURSE, I MAY END UP RULING SOON OR I MAY WAIT UNTIL  
22 VIKING COMES DOWN. BUT, IN ANY EVENT, IT WON'T TAKE THAT LONG.

23 THAT'S WHY I ASK, FOR THE NEXT 90 DAYS OR SO, WHY  
24 NOT, FOR INSTANCE, DO YOUR INITIAL DISCLOSURES MAYBE -- YOU  
25 KNOW, SEE WHAT HAPPENS AT THAT POINT, AND THEN WE GET TOGETHER

1 IN ANOTHER 60 DAYS.

2 **MS. NIX-HINES:** THAT WOULD BE ACCEPTABLE, YOUR HONOR.

3 **MS. LEV:** YES, YOUR HONOR.

4 **MS. NIX-HINES:** JUST LIMITED TO INITIAL DISCLOSURES,  
5 YES.

6 **MS. LEV:** I WANTED TO CLARIFY ONE POINT VERY QUICKLY.  
7 WHEN WE PREVIOUSLY SPOKE ABOUT THE POTENTIAL BURDEN ON  
8 VERIZON -- AND ONLY BECAUSE I THINK IT MAY INFORM YOUR HONOR'S  
9 REASONING HERE -- AS TO WHAT MIGHT HAPPEN IN ONE OF THESE  
10 BELLWETHER CASES, I ONLY REFER YOU TO -- IN THE PRAYER FOR  
11 RELIEF, SECTION 5, WHERE THE PRIVATE INJUNCTIVE RELIEF STATES  
12 PLAINLY THAT THEY'RE SEEKING REVISION OF ALL OF VERIZON'S  
13 CUSTOMER BILLS. SO IT'S NOT JUST PER PERSON, AND I JUST WANTED  
14 TO MAKE THAT CLEAR, YOUR HONOR.

15 **THE COURT:** I THINK THE ARBITRATOR DOESN'T HAVE THE  
16 ABILITY TO DO THAT, RIGHT?

17 **MS. LEV:** WELL, IT DEPENDS ON HOW THEY SEEK IT.

18 **THE COURT:** WHAT'S THAT?

19 **MS. LEV:** IT DEPENDS ON HOW THEY SEEK IT.

20 IN ANY EVENT, YOUR HONOR, I WANTED TO POINT OUT YOUR  
21 PROPOSAL FOR, YOU KNOW, ONLY INITIAL DISCLOSURES WORKS IN LIGHT  
22 OF THAT.

23 **THE COURT:** ALL RIGHT. I'M GOING TO STAY THE CASE  
24 UNTIL I RULE, BECAUSE IT'S SUCH -- IT WILL HAVE SUCH AN IMPACT  
25 ON WHERE THIS CASE GOES, BUT I WILL ALLOW THE PROCESS OF

1 INITIAL DISCLOSURES TO GO FORWARD.

2 WHY DON'T WE RECONVENE IN 60 DAYS FOR A STATUS  
3 CONFERENCE, SINCE I'M NOT REALLY HOLDING STATUS CONFERENCES AT  
4 THIS POINT, AND THEN SEE WHERE WE'RE AT.

5 VICKY, THAT WOULD --

6 **THE CLERK:** JULY 26TH, YOUR HONOR, AT 2:30.

7 **THE COURT:** JULY 26 AT 2:30. ALL RIGHT.

8 **MS. NIX-HINES:** THANK YOU, YOUR HONOR.

9 **THE COURT:** APPRECIATE IT. THANK YOU.

10 **MR. HATTIS:** THANK YOU, YOUR HONOR.

11 (PROCEEDINGS ADJOURNED AT 2:41 P.M.)  
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25

1 STATE OF CALIFORNIA )  
2 ) SS  
3 COUNTY OF CONTRA COSTA )  
4

5 I HEREBY CERTIFY THAT THE FOREGOING IN THE WITHIN-ENTITLED  
6 CAUSE WAS TAKEN AT THE TIME AND PLACE HEREIN NAMED; THAT THE  
7 TRANSCRIPT IS A TRUE RECORD OF THE PROCEEDINGS AS REPORTED BY  
8 ME, A DULY CERTIFIED SHORTHAND REPORTER AND A DISINTERESTED  
9 PERSON, AND WAS THEREAFTER TRANSCRIBED INTO TYPEWRITING BY  
10 COMPUTER.

11 I FURTHER CERTIFY THAT I AM NOT INTERESTED IN THE OUTCOME  
12 OF THE SAID ACTION, NOR CONNECTED WITH, NOR RELATED TO ANY OF  
13 THE PARTIES IN SAID ACTION, NOR TO THEIR RESPECTIVE COUNSEL.

14 IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 30TH  
15 DAY OF MAY, 2019.

16  
17  
18 

19 JOAN MARIE COLUMBINI, CSR NO. 5435

20 STATE OF CALIFORNIA  
21  
22  
23  
24  
25